

D.T.E. 03-65

Petition of Blackstone Gas Company for authorization and approval of the issuance long-term indebtedness not to exceed \$600,000, pursuant to G.L. c. 164, § 14.

APPEARANCE: Andrew J. Newman, Esq.
Rubin and Rudman, LLP
50 Rowes Wharf
Boston, MA 02110
FOR: BLACKSTONE GAS COMPANY
Petitioner

Thomas Reilly, Attorney General
By: Wilner Borgella, Jr.
Assistant Attorney General
Regulated Industries Division
Public Protection Bureau
200 Portland Street
Boston, MA 02114
Intervenor

I. INTRODUCTION

On June 17, 2003, Blackstone Gas Company (“Blackstone” or “Company”), pursuant to G.L. c. 164, § 14, filed a petition with the Department of Telecommunications and Energy (“Department”), requesting approval of a financing plan for the issuance of long-term indebtedness not to exceed \$600,000.¹ Pursuant to notice duly issued, a public hearing and an evidentiary hearing were held at the Department’s offices in Boston on August 4, 2003. Pursuant to G.L. c. 12, § 11E, the Attorney General intervened as a matter of right. At the hearing, the Company presented one witness in support of its application: Arthur Freitas, an analyst for La Capra Associates. The Attorney General did not present or cross-examine witnesses. The evidentiary record consists of thirteen exhibits and one response to a Department record request. Neither the Attorney General nor the Company filed a brief.

II. DESCRIPTION OF THE PROPOSED FINANCING

The Company requests approval by the Department to incur long-term indebtedness in the principal amount of \$600,000 from Dean Cooperative Bank (“Dean”). According to the Company, the proceeds of the loan will be used to refinance \$345,900 of long-term debt and to repay short-term bank loans incurred from time to time for the temporary financing of properly capitalized additions to the Company’s property, plant and equipment (Exh. B-1, at 2; Tr. at 15). The proposed financing is a term note for a fifteen-year term at an interest rate of 5.75 percent per annum for the first ten years of the term (Exh. B-1, at 2). For the last five

¹ Blackstone Gas last received approval of a financing petition in Blackstone Gas Company, D.T.E. 99-65 (1999).

years the interest rate will be revised to the Wall Street Journal Prime rate plus 1.25 percent at the start of the last five-year period (Exh. B-1, at 2). Dean Bank will hold a security interest in the Company's properties, and James Wojcik, the president and owner of the Company, has signed the loan as a guarantor (Exh. B-1, at 2; Tr. at 17-18).

III. STANDARD OF REVIEW

In order for the Department to approve the issuance of stock, bonds, coupon notes, or other types of long-term indebtedness² by an electric or gas company, the Department must determine that the proposed issuance meets two tests. First, the Department must assess whether the proposed issuance is reasonably necessary to accomplish some legitimate purpose in meeting a company's service obligations, pursuant to G.L. c. 164, § 14. Fitchburg Gas & Electric Light Company v. Department of Public Utilities, 395 Mass. 836, 842 (1985) ("Fitchburg II"), citing Fitchburg Gas & Electric Light Company v. Department of Public Utilities, 394 Mass. 671, 678 (1985) ("Fitchburg I"). Second, the Department must determine whether the Company has met the net plant test.³ Colonial Gas Company, D.P.U. 84-96 (1984).

² "Long-term" refers to periods of more than one year after the date of issuance. G.L. c. 164, § 14.

³ The net plant test is derived from G.L. c. 164, § 16. When the Department approves an issue of new stock, bonds, or other securities by a gas or electric company, if it determines that the fair structural value of the plant and of the land and the fair value of the nuclear fuel, gas inventories, or fossil fuel inventories owned by such company is less than its outstanding stock and debt, it may prescribe such conditions and requirements as it deems best adapted to make good within a reasonable time the impairment of the capital. See G.L. c. 164, § 16.

The Supreme Judicial Court has found that, for the purposes of G.L. c. 164, § 14, "reasonably necessary" means "reasonably necessary for the accomplishment of some purpose having to do with the obligations of the company to the public and its ability to carry out those obligations with the greatest possible efficiency." Fitchburg II at 836, citing Lowell Gas Light Company v. Department of Public Utilities, 319 Mass. 46, 52 (1946). In cases where no issue exists about the reasonableness of management decisions regarding the requested financing, the Department limits its Section 14 review to the facial reasonableness of the purpose to which the proceeds of the proposed issuance will be put. Canal Electric Company, et al., D.P.U. 84-152, at 20 (1984); see, e.g., Colonial Gas Company, D.P.U. 90-50, at 6 (1990).

Regarding the net plant test, a company is required to present evidence that its net utility plant (original cost of capitalizable plant, less accumulated depreciation) equals or exceeds its total capitalization (the sum of its long-term debt and its preferred and common stock outstanding) and will continue to do so following the proposed issuance. Colonial Gas Company, D.P.U. 84-96, at 5 (1984).

IV. CAPITAL STRUCTURE OF THE COMPANY

As of December 31, 2002, the Company's total capitalization was \$363,155. This amount includes \$345,900 in long-term debt, and \$17,255 in outstanding common equity consisting of \$10,450 in common stock and of \$6,805 in premium on capital stock (Exhs. B-1, at 1, DTE 1-4; Tr. at 15).

V. ANALYSIS AND FINDINGS

The Company intends to use the proceeds of the proposed long-term indebtedness to refinance long-term and short-term debt (Exh. B-1, at 4). The Department has found previously that issuing debt for the purposes of paying down short-term debt and refinancing long-term debt is a legitimate utility purpose as contemplated by G.L. c. 164, § 14. Western Massachusetts Electric Company, D.T.E. 02-49 at 10 (2003); Berkshire Gas Company, D.T.E. 98-129, at 8 (1999); New England Power Company, D.P.U. 95-101, at 11 (1995). Therefore, the Department finds that the Company's use of the proceeds to refinance short-term debt and for related issuance costs is reasonably necessary to meet the Company's service obligations and in accordance with G.L. c. 164, § 14.

In Blackstone Gas Company, D.T.E. 98-91, at 5 (1999), the Department directed "all companies, at a minimum, to indicate whether they sought alternative forms of financing or contacted other lenders to demonstrate that their proposed financing was cost-effective." In preparation for this proceeding, the Company contacted Fleet Bank and Dean Bank (Exhs. B-1, at 2; DTE 1-5). Blackstone stated that Fleet Bank would not make the loan because the Company did not fit the bank's portfolio (id.). The Company explained that many of the larger banks, such as Fleet Bank, do not want to lend to a customer of Blackstone's size, because of a perception by these lending agencies that the associated risks are not within tolerances, and loans to these customers do not fit into their portfolio of assets (Tr. at 19). As a general matter, the Department has long recognized the difficulties faced by small utility companies in obtaining access to the capital markets. Generic Cost of Capital for Water Companies,

D.P.U. 96-90-A at 5 (1997). Based on the above considerations, the Department accepts Blackstone's explanation for its selection of Dean for the following reasons: (1) the small size of the Company; (2) the relatively small amount of the proposed financing; and (3) the Company did in fact contact more than one bank to try to obtain a competitive offer.

With respect to the net plant test, as of December 31, 2002, the Company's utility plant in service was \$2,070,699, with accumulated depreciation of \$670,399, which results in a net utility plant of \$1,400,300 (Exhs. DTE 1-1; B-1 at 2). The net utility plant combined with the Company's total capitalization of \$363,155 yields an excess of net utility plant in service over outstanding capital of \$1,037,145 (Exh. DTE 1-1; Tr. at 15-16). The proposed new financing of \$600,000 would increase the total capitalization to \$657,683, resulting in an excess of net utility plant over outstanding capital of \$742,617 (Exh. DTE 1-1). Therefore, the Department finds that the Company's proposed financing meets the net plant test.⁴

Issues concerning the prudence of the Company's financing have not been addressed in this proceeding, and the Department's decision in this case does not represent a determination that any project is economically beneficial to the Company or its customers. The Department emphasizes that its determination in this Order shall not in any way be construed as a ruling relative to the appropriate ratemaking to be accorded any costs associated with the proposed financing.

⁴ According to the Company, there have been no significant plant additions since the end of 2002 (Tr. at 20).

VI. ORDER

Accordingly, after due notice, hearing, and consideration, the Department

VOTES: That the issuance, from time to time on or prior to December 31, 2003, by Blackstone Gas Company, of long-term indebtedness, in an amount not to exceed \$600,000, is reasonably necessary for the purposes for which such issuance has been authorized; and it is

ORDERED: That the issuance, from time to time on or prior to December 31, 2004, by Blackstone Gas Company, of long-term indebtedness in an amount not to exceed \$600,000, is reasonably necessary for the purposes for which such issuance has been authorized; and it is

FURTHER ORDERED: That the net proceeds from such term bank loans shall be used for the purposes as set forth herein; and it is

FURTHER ORDERED: That the Secretary of the Department shall within three days of the issuance of this Order cause a certified copy of it to be filed with the Secretary of the Commonwealth.

By Order of the Department,

Paul G. Afonso, Chairman

W. Robert Keating, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).